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Proposal to amend the Mining Law and Environmental Laws

On March 24, 2023, the Federal Executive Branch submitted before the Deputies Chamber, the proposal to amend the Mining Law, the National Water Law, the General Law on Ecological Balance and Environment Protection and the General Law on Waste Prevention and Comprehensive Management, which was published in the parliamentary gazette on March 28, 2023 (the "**Proposal**").

The Proposal, under analysis of different commissions to be later discussed in the full Deputies Chamber, sets out new rules for the granting of mining concessions, regulates the granting of mining allocations in favor of public sector entities with indefinite term, eliminates the preferential nature of mining activities, modifies the obligation regime for the holders of mining concessions, reduces the term of mining concessions, eliminates the right to use water coming from mining activities, limits the object of the concessions per mineral or substance susceptible of exploitation, includes new mining crimes, adds new environmental and social instruments, among other modifications.

The Federal executive branch, under the argument of "*recovering the State's control of the mineral and water resources found in the Mexican subsoil which are of the direct domain of the Nation*", proposes new rules on mining matters, being the most relevant, the following ones:

- » The granting of mining concessions will be carried out through public biddings. Therefore, concession titles will not be granted to the first requesting party, repealing the concept of free plot.¹

According to the Proposal, the concession title will be granted to the requesting party obtaining the positive decision in the corresponding bidding process, after obtaining the environmental, labor, energy and/or social permits and licenses, in addition to the mining water concession.

- » The concession titles must specify the mineral or substance susceptible of exploitation, that is to say, the concession titles will not be granted for all the resources located in the concessioned plot but for specific mineral.
- » The validity term of the concession titles is reduced from 50 to 15 years from the registration date of the corresponding concession title before the Mining Public Registry (the "**Registry**"), which may be extended only once for the same term, that is to say, the maximum term of a concession title will be up to 30 years, being considerable shorter than the term currently granted under the Mining Law in effect.
- » The mining activity will no longer be preferential over any other use or exploitation of the land, while proposes the elimination of the eminent domain right, assuming that this will generate opportunities to obtain a higher consideration by the *ejidos* and agriculture communities.

¹ The Mining Law in effect provided that the mining concessions and allocations will be granted over free lots to the first requesting party of such mining lot.

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- » The limitation of concession minerals and the term of the concessions, as well as the negotiation of temporary occupation contracts and easements derived from the elimination of the preferential nature of the activity will have an important impact at the time of evaluating the profitability of the projects.
- » The prior authorization of the Economy Ministry is required to transfer a concession title.
- » Concession titles could not be subject of a guarantee for the fulfillment of obligations, since the Proposal forbids it and also eliminates within the acts and agreements subject to registration before the Registry, to the ones related to the transfer promise agreements, encumbrances and/or contractual obligations granted with respect to concession titles.
- » The temporary suspension due to technical and economical causes may be argued only once and up to a 3-year term.²
- » The Proposal foresees the granting of indefinite term assignments in favor of Federal Public Administration parastatal entities.

On environmental preservation matters, the Proposal forbids mining activities within natural protected areas, riverbeds and basins of national waters and its corresponding federal zones, islands submarine plinths, keys and reefs, seabed, exclusive economic zone subsoil, federal maritime terrestrial zone and land gained to sea. It also establishes the obligation to report any accident or incident that occurs within the mining plot within a maximum period of 72 hours.

In connection with waste management, it establishes restrictions for the location of deposits or sites for the final disposal of soil, tailings, slags of mines and mineral processing facilities, such as the federal zones of national property, as well as the submission of a Waste Management Program and a Restoration Program for the Closure and Post-Closure of the mines before the Environment and Natural Resources Ministry ("**SEMARNAT**" for its acronym in Spanish). Therefore, along with the amendment of the Mining Law, the Proposal intends to amend the General Law on Ecological Balance and Environment Protection and the General Law on Waste Prevention and Comprehensive Management.

Regarding the National Water Law, the proposed amendment pursues that water concession titles granted by the National Water Commission ("**CONAGUA**" for its acronym in Spanish), for the use of water in mining operations be granted solely and exclusively for such purpose and that they have a renewable 5 year term, prohibiting their transfer.³ The Proposal also prohibits granting concession titles for mining operations in areas without water availability.

The Proposal establishes new requirements to evaluate the social impact that mining projects will cause and to guarantee the implementation of prevention, mitigation and compensation measures. It also set forth mechanisms to enforce the right to prior, free and informed consultation for indigenous and afro-mexican peoples and communities, including the obligation to execute an agreement to obtain the use permit, which compensation must consider at least the 10% of the profits obtain from the mining activities.

² Currently, Mining Law establishes that the temporary suspension due to technical and economic cases could be submitted one time up to three consecutive years, within a ten-year period.

³ The National Waters Law in effect provides that the term of a concession or allocation for the exploitation, use or taking advantage of national waters shall not be less to five or more than thirty years.

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Finally, it is important to also consider the transitory provisions of the Proposal which in general state the following:

- » The dismissal of applications for new exploration and exploitation concessions that are in process, without any prior proceeding, which is particularly serious.
- » The exploration and exploitation concessions granted before the amendment, if the Proposal is approved, will maintain the validity included in the corresponding title.
- » As of the entry into force of the Proposal, if approved, the concessions located in natural protected areas will not be extended, nor those for the exploration, exploitation and benefit of mercury.
- » The holders of mining concessions will have period of one year to: (i) evidence the issuance of a credit letter guaranteeing possible damages generated by mining activities; (ii) submit for authorization before SEMARNAT, the Mine Restoration and Closure and Post-Closure Program; and, (iii) carry out the removal of deposits or final disposal sites as tailings dams located in natural protected areas, wetlands, federal zones, riverbeds, or in places in which populations, productive zones or ecosystems.
- » The holders of national water concessions carrying out mining exploration, exploitation and benefit activities will have a 90-day period to request CONAGUA to modify the industrial use of the corresponding concessions to mining.
- » The concessions granted to individuals or entities concentrating more than the 30% of the total available volume of an aquifer or basin, will conclude its validity in terms of the corresponding concession titles.

With the conviction that an informed and constructive dialogue, in which all interested parties related to the mining industry participate, we will closely follow the discussions on the Proposal, in the Deputies Chamber and in other different spaces of the mining industry.

Please do not hesitate to contact us through our partner Brenda Rogel (brogel@ritch.com.mx), if you require any additional information on the Proposal and its consequences or in any other environmental or regulatory matter.

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